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Letter dated 26 June 2017 from the Chargé d'affaires a.i. of the Permanent Mission of Libya to the United Nations addressed to the President of the Security Council

I have the honour to write to you in your capacity as President of the Security Council for the month of June 2017 to draw the Security Council's attention, once again, to the substantial losses suffered by the Libyan Investment Authority and its subsidiaries under the current sanctions regime. These unnecessary and debilitating financial losses are due to the inability of the Libyan Investment Authority and its subsidiaries to direct the financial institutions that hold their assets to manage them with a reasonable standard of care. This case was officially brought to the attention of the Security Council more than one year ago in the letter dated 21 March 2016 from the Permanent Representative addressed to the President of the Security Council (S/2016/275), in which he requested your urgent intervention to protect the Libyan assets, but no real action has been taken since then. Furthermore, I alerted the members of the Security Council in my statement before the Council on 7 June 2017 to the urgent and vital need to take expeditious measures to amend the related resolutions in order to allow for better management of the frozen Libyan assets to stop and prevent the continued substantial loss in value of these assets due to the ongoing sanction regime imposed since 2011.

In response to the previous request of 21 March 2016, the Security Council, in its resolution 2278 (2016), affirmed its "readiness to consider changes, when appropriate, to the asset freeze at the request of the Government of National Accord". By the present letter, I confirm this is the request of the Presidency Council of the Government of National Accord. Moreover, and more importantly, all people of Libya will benefit from these proposed changes by ensuring that the catastrophic financial losses now facing the sovereign wealth funds, to the sole benefit of various international banks, and to the detriment of the Libyan people and their legacy, will be reversed.

To that end, the Libyan authorities concerned kindly request the Security Council to take urgent action to amend resolutions 1970 (2011), 1973 (2011) and 2009 (2011) to explicitly allow the Libyan Investment Authority to engage in fund management within the frozen accounts and to prevent the further dissipation of the assets of the Libyan Investment Authority.

The Libyan authorities are not requesting any assets to be unfrozen, but rather, they are requesting a Security Council resolution provision that will explicitly permit the movement of funds between frozen accounts and will permit the reinvestment of funds and the closing and opening of accounts, so that the value of

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assets of the Libyan Investment Authority and its subsidiary funds may be protected and so that the returns can be maximized during the time that they remain frozen.

The assets of the Libyan Investment Authority remain frozen pursuant to resolutions 1970 (2011) and 1973 (2011), as amended in resolution 2009 (2011). When the assets freeze was originally put in place, it was of course not intended as a punishment to Libya, but rather a measure to protect the assets from dissipation during the revolution and the transition after the fall of the Gaddafi regime. Yet the assets freeze is now having a very serious negative impact on the interests of the Libyan people.

The Libyan Investment Authority estimates that, in 2014 alone, instead of increasing the value of its assets base, it had real losses of $721 million. Furthermore, it lost an additional $1.6 billion to $2.3 billion in what would have been returns on investments if its assets had been properly invested in conservative investments with competitive interest rates. These losses have only increased, on an annual basis, since 2014, as more of the investments of the Libyan Investment Authority and its subsidiaries have matured, and as more banks refuse to pay market interest or returns on these assets. These assets represent the future of the Libyan people and they are being squandered by a sanctions regime that is flawed in its rigidity and that could easily be fixed by this Council.

To elaborate more on this problem and the proposed remedy, the Libyan Investment Authority has three main investment portfolios: equity investments, fixed income investments and alternative investments. The Libyan Investment Authority has no access to its equity portfolio and, hence, cannot respond to market changes or currency fluctuations, which are constantly eroding the value of that portfolio. Moreover, most of the bonds that the Libyan Investment Authority had in its fixed income portfolio have matured, and the proceeds are in frozen accounts, where they are earning zero or negative rates of interest. Also, the alternative investments portfolio is inaccessible to the external investment managers, who still charge the Libyan Investment Authority management fees, even though they are not managing the funds. In fact, if the fund is underperforming, the Libyan Investment Authority is not able to close the fund or transfer it to another manager. Thus, there is no incentive for these private financial institutions and managers who are holding Libyan Investment Authority funds to provide competitive interest rates or to manage the funds effectively.

The squandering of the value of these assets is not acceptable and should be fixed as soon as possible. Since the Permanent Representative of Libya formally alerted you to this problem in March 2016, the Libyan Investment Authority estimates it has lost billions of dollars more in value.

The Panel of Experts on Libya acknowledged that this problem needs to be corrected in its report to the Security Council dated 3 March 2016 (S/2016/209), stating in paragraph 257: "It was clearly not the aim of the Security Council that the investments should be diminished, meaning that this matter needs to be clarified, preferably by including an explicit exemption for fund management in a future resolution". Furthermore, the Panel's recommendation 8 provides: "To explicitly allow and encourage the reinvestment of assets frozen under the measures, in consultation with the Government of Libya, in order to protect the value of investments of designated individuals and entities".

The Security Council should take immediate action to correct this problem. The Libyan authorities request that the following language be included in a new Security Council resolution:

(a) The Libyan Investment Authority shall not be prohibited from the movement of funds between accounts, the closing and opening of accounts, the liquidation of accounts and the investment and reinvestment of its funds or other financial assets and economic resources, provided that such actions meet the following three requirements: (i) any transfer is to a frozen account that is in the same name as the transferor; (ii) the transfer does not represent, directly or indirectly, a transfer of any interest of the Libyan Investment Authority to any other person subject to sanctions under the Security Council; and (iii) the transfer is in accordance with the applicable procedures of the Member State(s) which have jurisdiction over the funds or other financial assets and economic resources;

(b) The Libyan Government shall report to the Sanctions Committee all transactions performed by the Libyan Investment Authority pursuant to and in compliance with this resolution, and the Sanctions Committee shall provide guidance to Member States with regard to the implementation of this resolution.

The requested amendment to the above-mentioned Security Council resolutions is intended to safeguard the interests of the Libyan people while keeping frozen all assets of the Libyan Investment Authority and its subsidiaries that are currently frozen.

I would appreciate the understanding and support of the members of the Security Council for this modest, but critical, change to the sanctions regime, to preserve the value of the assets of the Libyan Investment Authority and its subsidiaries, for the benefit of all Libyan people. I strongly urge the Security Council to take our important, fair, just and urgent request on board during the revision of resolution 2278 (2016) and that it be reflected in the new revised resolution.

I look forward to swift action by the Security Council on this issue.

(*Signed*) Elmahdi **Elmajerbi**
Ambassador
Chargé d'affaires a.i.